

FILED  
U.S. DISTRICT COURT  
SAVANNAH DIV.

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF GEORGIA  
WAYCROSS DIVISION

2006 DEC 13 PM 2:54

CLERK *[Signature]*  
SO. DIST. OF GA.

JANE POWELL,

Plaintiff,

v.

JO ANNE B. BARNHART,  
Commissioner of Social Security,

Defendant.

CIVIL ACTION NO.: CV505-060

**ORDER**

After an independent review of the record, this Court concurs with the Magistrate Judge's Report and Recommendation, to which Objections have been filed. In her Objections, Plaintiff contends that the Administrative Law Judge ("ALJ") failed to consider the findings of a consultative psychologist and a mental health clinic in finding her mental impairments to be non-severe. Plaintiff further contends that the ALJ failed to credit testimony and evidence as to the severity of Plaintiff's bowel condition. Finally, Plaintiff asserts that the ALJ failed to consider certain lay testimony.


This Court finds that the ALJ's determinations are supported by substantial evidence. It is clear that the ALJ did not err in discrediting the opinions of the consultative psychologist or the mental health clinic. Neither Dr. Eaton, the consultative psychologist, nor the mental health clinic, a facility Plaintiff utilized at the request of counsel, can be properly characterized as a "treating source" within the meaning of the Commissioner's

regulations and the law of the Eleventh Circuit. Thus, the opinions of these sources are entitled to no special weight.

Additionally, this Court finds that the ALJ's findings regarding Plaintiff's bowel condition are supported by substantial evidence. The ALJ determined that Plaintiff's testimony on this point was not fully credible, specifically because it was inconsistent with the whole of the objective evidence. See Dyer v. Barnhart, 395 F.3d 1206, 1210 (11th Cir. 2005). Finally, it is clear that the ALJ did not err in refusing to credit the lay witness testimony of Plaintiff's sisters. The sisters' statements simply complimented Plaintiff's testimony as to her alleged impairments. The ALJ explicitly found that Plaintiff's testimony, the primary evidence in support of her allegations, was not credible. The ALJ's discrediting of the sisters' testimony is clearly implied by the ultimate finding of no disability. See Tieniber v. Heckler, 720 F.2d 1251, 1254-1255 (11th Cir. 1983) (citing Allen v. Schweiker, 642 F.2d 799 (5th Cir. 1981)).

The Report and Recommendation of the Magistrate Judge is adopted as the opinion of the Court. The decision of the Commissioner is **AFFIRMED**. The Clerk of Court is hereby authorized and directed to enter an appropriate Judgment of Dismissal.

SO ORDERED, this 13<sup>th</sup> day of DECEMBER, 2006.

  
WILLIAM T. MOORE, JR., CHIEF JUDGE  
UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF GEORGIA